Rajan Chellaiah v Menteri Sumber Manusia, Malaysia & Anor

HIGH COURT (KUALA LUMPUR) — ORIGINATING MOTION NO R1–25–71 OF 1998
KC VOHRAH J
22 MARCH 2000

Labour Law *— Industrial Court — Discretion of Minister — Employee accepted offer to work and claimed to have been unlawfully dismissed — Refusal of Minister to refer representation to Industrial Court as employee had not yet reported for work — Whether the employee a 'workman' under the Industrial Relations Act 1967 — Whether representation should be referred to the Industrial Court*

The applicant was offered a job in the second respondent's company through a letter dated 9 January 1997 with effect from 1 March 1997. The applicant accepted the offer on 4 February 1997 but before the applicant could start his employment, the second respondent had notified the applicant on 19 February 1997 that they were not issuing the applicant with a contract of employment. The applicant claimed he was unlawfully dismissed and should be reinstated. The minister refused to refer the applicant's representation to the Industrial Court on grounds that the applicant was not a 'workman' under s 20 read with s 2 of the Industrial Relations Act 1967 ('the Act'). This was because the applicant had not reported to work and thus could not had been employed by the second respondent under a contract of employment. The applicant applied for a certiorari and a mandamus to direct the minister to refer the representations to the Industrial Court.

Held, allowing the application:

(1) The minister's interpretation of the Act failed to take into account other provisions of the Act including the definition of 'employer' and 'contract of employment' (see p 205E).

(2) Whether the applicant was or was not a 'workman' within the meaning of the Act was a question of law and fact which were clearly matters for the Industrial Court to decide (see p 205G).

[Bahasa Malaysia summary

Pemohon telah ditawarkan kerja dalam syarikat penentang kedua melalui sepucuk surat bertarikh 9 Januari 1997 mulai daripada 1 Mac 1997. Pemohon menerima tawaran tersebut pada 4 Februari 1997 tetapi sebelum pemohon sempat mula bekerja, penentang kedua telah memberitahu pemohon pada 19 Februari 1997 bahawa mereka tidak akan mengeluarkan satu kontrak penggajian untuk pemohon. Pemohon mendakwa bahawa beliau telah dipecat dengan tidak sah dan harus dikembalikan jawatan. Menteri enggan merujuk representasi pemohon kepada Mahkamah Perusahaan atas alasan

bahawa pemohon bukanlah seorang 'pekerja' di bawah s 20 dibaca dengan s 2 Akta Perhubungan Perindustrian 1967 ('Akta tersebut'). Ini adalah kerana pemohon tidak melaporkan diri untuk kerja dan justeru itu tidak mungkin telah diambil bekerja oleh penentang kedua di bawah satu kontrak penggajian. Pemohon memohon certiorari dan mandamus untuk mengarah menteri supaya merujuk representasi kepada Mahkamah Perusahaan.

Diputuskan, membenarkan permohonan:

(1) Tafsiran Akta tersebut oleh menteri gagal mengambil kira peruntukan lain Akta tersebut termasuk tafsiran 'majikan' dan 'kontrak pekerjaan' (lihat ms 205E).

(2) Sama ada pemohon merupakan seorang 'pekerja' dalam lingkungan maksud Akta tersebut adalah satu persoalan undang-undang dan fakta yang jelas merupakan perkara-perkara untuk ditentukan oleh Mahkamah Perusahaan (lihat ms 205G).].

Notes

For cases on industrial court generally, see 8 *Mallal's Digest* (4th Ed, 1999 Reissue) paras 1029–1128.

Cases referred to

Hon Minister for Human Resources, The v Thong Chin Yoong and another appeal [1999] 4 CLJ 161 (refd)

Sarker v South Tees Acute Hospital NAS Trust [1997] 1 CR 673 (refd)

Legislation referred to

Industrial Relations Act 1967 s 20(3)

S Sivaneindiren (*Au Yong Pei Yi* with him) (*Cheah Teh & Su*) for the applicant.

Amarjeet Singh (Senior Federal Counsel) for the first respondent.

Sujatha Balan (*Shook Lin & Bok*) for the second respondent.

KC Vohrah J: Rajan Chellaiah ('the applicant') represented that he had been unlawfully dismissed by the second respondent and that he should be reinstated. The Minister of Human Resources ('the first respondent') refused to refer the representations of the applicant to the Industrial Court under s 20(3) of the Industrial Relations Act 1967 ('the Act') on the following grounds (translated from Bahasa Malaysia):

(i) the (applicant) is not a 'workman' within the context of s 20 of the Act because s 2 of the Act states that:

> 'workman means any person, including an apprentice, employed by an employer under a contract of employment ...'

(ii) the (applicant) was only to report for duty on 1 March 1997 and he had not been 'employed by an employer' under a contract of employment;

A (iii) what arose in this case was an offer by the company and acceptance by the (applicant) (offer and acceptance) and the issue which arises here is one of breach of promise and not dismissal.

I ordered certiorari to issue. I also gave an order of mandamus directing the Minister to refer the representations to the Industrial Court.

B The facts as gleaned from the affidavits are not in dispute. The company (the second respondent) had offered the applicant employment as from 1 March 1997 as a forest area manager in Sarawak in a letter dated 9 January 1997. The applicant accepted the offer by letter dated 4 February 1997.

C Before the applicant could start his employment on 1 March 1997 the second respondent, on 19 February 1997, notified the applicant that the company was not issuing him with 'a contract of employment'.

It is against this background of facts that the Minister gave his reasons for his refusal to refer the representations to the Industrial Court.

D It is clear that the reasons given arise from his interpretation of the law ton he word 'workman' as defined in the Act.

The senior federal counsel who appeared in the case before me had argued that the applicant was to report for duty on 1 March 1997 and as such he had not yet been employed by an employer under a contract of employment and that what existed in this case was an offer by the second E respondent and an acceptance by the applicant and the issue that existed in the matter was one of breach of promise and not of dismissal. This interpretation, however, does not take into account the other impinging provisions of the Act including the definitions of the words 'employer' and 'contract of employment'. One has to be aware of the case of *Sarker v South* F *Tees Acute Hospital NAS Trust* [1997] 1 CR 673 to know that there is more to delve into when dealing with certain terms which are statutorily defined and which do not necessarily take on their common or ordinary meaning and when other provisions of a statute have to be interpreted; and that in this case all these have to be applied to a set of facts relating to who is a 'workman' and the benefits he may obtain under the Act.

G The matter before the Minister is not a matter of a straightforward appraisal of facts upon which he can make a decision whether to refer to the Industrial Court or not. Whether the applicant is or is not a 'workman' within the meaning of the Act is a question of law and whether the ensuing interpretation applies to the facts of the case is a mixed question of law and H fact and these matters are clearly matters for the Industrial Court to decide. The Minister had 'failed to fully appreciate the scope of his discretion under s 20(3)' of the Act when he declined to refer the representations to the Industrial Court. As was stated in *The Hon Minister for Human Resources v Thong Chin Yoong and another appeal* [1999] 4 CLJ 161 at p 166:

I Whether or not an employee was constructively dismissed is a question of law which is not the province of the Minister to decide and we feel that the Minister is not competent to decide and the Industrial Court is the best venue to decide this question. In the proper exercise of his discretion the Minister

> ought to have referred the respondent's representation to the Industrial Court to decide on its merits. Therefore, we are equally of the view that the Minister failed to fully appreciate the scope of his discretion under s 20(3) of the Act, when he declined to refer to the Industrial Court ...

Other issues were raised by the applicant as well as by the first and second respondent but I do not think it is necessary for me to examine these issues, some of which are completely irrelevant, in view of the application succeeding on the earlier ground.

I gave an order for certiorari to issue and for an order of mandamus directing the Minister to refer the representations to the Industrial Court for an award with costs to the applicant.

Application allowed.

Reported by Andrew Christopher Simon